In the Supreme Court of the United States.

OCTOBER TERM, 1901.

J. HENRIETTA HOFFELD, EXECUTRIX OF Rudolph Hoffeld, deceased, appellant,
v.
THE UNITED STATES, APPELLEES.
No. 318.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

The findings of fact show (Transcript, pp. 3, 4, and 5) that on the 28th day of May, 1886, Harry Jones, J. L. Cole, Charles L. Weaver, and Samy Perri, through William Hinds, acting in their behalf, and under a power of attorney, made entry of the NE. ¼ of section 35, Township 14 S., range 87 west, of the sixth principal meridian, as coal entry No. 13, at Gunnison, Colo., and paid therefor the sum of $3,200. The affidavit required by section 32 of the coal-land regulations, which in effect requires the entryman to certify that he makes the entry in his own right and for his own benefit and not for the benefit of any other person, was not made by the several entrymen, but by

said Hinds as their attorney in fact. The affidavit was held to be insufficient by the officers of the General Land Office on April 12, 1888, and the local land officers were directed to notify the claimants to that effect. On August 27, 1894, the local land officers reported that two of the entrymen were dead; that Perri and Cole were no longer residents of Colorado; that their whereabouts could not be ascertained; that none of said entrymen had any interest in said land; that the representatives of the present owners, W. L. Youle, stated that the evidence required could not be furnished; that no coal in paying quantities had existed on said tract, and that the owners are indifferent as to whether said entry is canceled or not. Neither the entrymen nor their assignees took any action in the premises, and accordingly the entry was canceled by the General Land Office on the 24th of January, 1895. Previously, to wit, on May 29, 1886, the said entrymen had conveyed said land to the Ohio Creek Anthracite Coal Company. On August 29, 1887, a writ of attachment was issued out of the county court of Gunnison County, Colo., in a suit wherein A. S. Hinds was plaintiff and said company was defendant, and levied upon the aforesaid tract of land as well as upon other land belonging to said company. On August 23, 1887, a writ of attachment was issued out of the district court of Arapahoe County, Colo., in a suit wherein the Hendric and Bolthoff Manufacturing Company were plaintiffs and the Ohio Creek Anthracite Coal Company was defendant, and levied upon said land as well as upon other land belonging to

said company. On November 10, 1887, the aforesaid tract of land and other property was sold by the sheriff of Arapahoe County to Rudolph Hoffeld for the sum of $75 under said writ of attachment in the suit wherein the Hendric and Bolthoff Manufacturing Company were plaintiffs and the Ohio Creek Anthracite Coal Company was defendant. On June 10, 1897, William L. Youle, as attorney in fact for Rudolph Hoffeld, made application for repayment of the purchase money paid on said land under the provisions of section 2 of the act of June 16, 1880, which was denied on November 4, 1897, and again upon appeal to the Secretary of the Interior on December 11, 1899, for the reason that said application did not come within the provisions of said act of June 16, 1880, holding that the same had been procured through false and fraudulent affidavits, and also that the entry could have been confirmed if the affidavit required under section 32 of the coal-land regulations had been made. (See 20 Land Dec., 379.)

On June 5, 1900, the plaintiff brought an action in the Court of Claims to recover the said $3,200 purchase money paid upon said land, founding his claim upon an act of Congress, to wit, section 2 of the act of June 16, 1880 (21 Stats., 287). On January 21, 1901, the Court of Claims dismissed the petition of the plaintiff upon the ground that the purchaser at a judicial sale was not the assignee of the original entrymen within the meaning of that term as used in said act of June 16, 1880 (Transcript, pp. 5, 6, and 7). On February 11, 1901, the claimant made a motion for a

rehearing and new trial in said cause, assigning several errors of law in the opinion of the court. On April 8, 1901, the motion for a new trial and rehearing was overruled in a more extended opinion than was originally delivered, the court adhering to its former decision that the claimants in this case were not the assignees of the original entrymen (Transcript, pp. 8, 9, and 10). Whereupon this appeal was taken to this court.

BRIEF.

The question presented for consideration in this appeal is a narrow one, and consists of the interpretation of the second section of the act of June 16, 1880 (21 Stats., 287), which reads as follows:

> In all cases where homestead or timber-culture or desert-land entries or other entries of public lands have heretofore or shall hereafter be canceled for conflict, or where, from any cause, the entry has been erroneously allowed and can not be confirmed, the Secretary of the Interior shall cause to be repaid to the person who made such entry, or to his heirs or assigns, the fees and commissions, amount of purchase money, and excesses paid upon the same upon the surrender of the duplicate receipt and the execution of a proper relinquishment of all claims to said land, whenever such entry shall have been duly canceled by the Commissioner of the General Land Office.

In the case at bar there has not been any assignment by operation of the original entrymen, and the assignment, if any exists at all, is one by operation of

law upon the theory that the purchaser of this land at a sheriff's sale acquired not only all the right, title, and interest which the Ohio Creek Anthracite Coal Company had in the land itself, but in addition thereto acquired the right to the return of this purchase money created by the above-recited act as a right incident to and flowing from the acquisition of the land itself; in other words, that the right created by this statute is in the nature of a covenant flowing from the land, inseparable from the land itself, and in the nature of a covenant of warranty inuring to the benefit of the owner of the land whenever or however acquired.

This contention on behalf of the claimant was combated in the court below upon the ground that the right created by the above-recited act was a personal right inuring to the benefit of the original entryman or whomsoever he might personally assign the same in a sale of the premises, the right to the return of the purchase money in case the entry should be canceled being in the nature of a special warranty or a covenant of title to secure the alienee of the original entryman against loss in case of cancellation; but that the act never contemplated that this equitable right to the return of the purchase money in case of cancellation should be taken away from the original entryman or his alienee by any involuntary process of law, the result of which was to turn the Government into an agency for the collection of debts. These views met with the approval of the learned court below in two

opinions delivered by Weldon, J., and to the able presentation of the case made by the learned judge below, very little can or need be added.

Without being understood as saying that there can not be such a thing as an assignment by operation of law for certain purposes and under certain circumstances which it is not now necessary to discuss, yet it would seem clear that such result can not possibly follow upon the statute being considered to a purchaser at a judicial sale. The right to the return of the purchase money is purely a creature of the statute. It does not flow from any covenant, obligation, or equity, but has its sole existence in the provisions of this statute, without which it would be impossible to recover the money. Being, therefore, a thing created entirely by statute, it follows with unerring certainty that whosoever applies for the relief granted by the statute must bring himself squarely within its provisions, and can not rely upon any seeming right or equity *dehors* the statute.

Now, the statute gives this right to the entryman, his heirs or assigns, upon the surrender of the duplicate receipt issued by the local land office and upon the execution of a relinquishment of all claim to the land. There has been no assignment of this right by the original entryman to anyone except the Ohio Creek Anthracite Coal Company, from whom the appellant derived the same by a sale under an execution had and for the sum of $75, and we have the remarkable spectacle of a purchaser at a judicial sale

claiming the right to have returned to him the sum of $3,200 as the purchase money for a piece of property for which he only paid the sum of $75. On page 6 of the brief of the appellant there is an unwarranted statement that the consideration recited in the sheriff's deed, to wit, the sum of $75, was not the real consideration, but that the same was in fact much more, but that the attorneys did not think it necessary to prove the amount, since they were only entitled to the original purchase money. There is not a word in the record to warrant such a statement, nor was there a line of proof to this effect in the court below. The amount of the debt of the coal company for which the land was sold was not given, nor has there been any paper presented which shows any other or different consideration for the price of the land than the price recited in the sheriff's deed, to wit, the sum of $75.

It is well settled that the purchaser at a judicial sale takes the bare, naked legal title of the judgment debtor, unaccompanied by any special warranty or by any covenants in the mesne conveyances, or by any rights or equities existing in the judgment debtor which are not inherently and inseparably a part of the real estate so sold at said judicial sale. In other words, the purchaser takes what the sheriff has a right to sell, and nothing more. And of this he is charged with full notice under the doctrine of *caveat emptor*. (*Waples* v. *United States*, 110 U. S., 630, 633; *Burbank* v. *Conrad*, 96 U. S., 291.)

The sheriff in this case had no right to sell the equitable claim of the Ohio Creek Anthracite Coal Company to the refund of the purchase money under the act of June 16, 1880, and the decree of execution did not and could not undertake to clothe him with any such authority. The right of the Ohio Creek Anthracite Coal Company, as the assigns or alienees of the original entrymen, to the refund of this purchase money is still inherent in it; and if the United States owes this money to any one it owes it to the Ohio Creek Anthracite Coal Company, and repayment to the appellant would not discharge the Government's obligation, nor could the plea of such payment be successfully interposed against a suit for the return of money by that corporation. The claimants in this case acquired whatever rights the judgment debtor had in this land at the date of the sheriff's sale under execution, no more and no less. Of what that title was the claimant is charged with notice, and if it turns out that the claimant had no title to the land at all, then it follows that the sheriff could not sell the land nor the appellant purchase the same; and yet, although he got nothing whatever, no suit could be maintained by him to recover the amount of money which he paid for the land at said sale. (See *Waples* v. *United States*, *supra*.)

It is manifest from the language of the act itself that the intent of Congress was to refund such purchase money to the person who made the entry, or to such person as he himself had created as his successor in

right and from whom he had received the consideration of purchase, or in case of death to his heirs, and the word assign in the statute is meant to designate that person to whom the original entryman voluntarily transfers his interest under the statute. But it is thoroughly well settled that a judgment is not an assignment, because an assignment requires the act of a party, and a judgment is a mere act of law. (*Breading* v. *Boggs*, 20 Penn. St., 33; *Doe* v. *Devant*, 3 M. & S., 353.)

It would seem that the assignment referred to in this act relates to the assignment of land and not to assignment of the right to repayment contained in the statute, as witness the requirements concerning the surrender of the duplicate receipts and the execution of a quitclaim deed to the land. This construction would seem also to be necessary in view of the provisions of section 3477 Revised Statutes, which prohibits and renders null and void assignments of claims against the United States. (See *United States* v. *Gillis*, 95 U. S., 407; *Spofford* v. *Kirk*, 97 *id.*, 484; *Erwin* v. *United States*, *id.*, 392; but see *Goodman* v. *Niblack*, 102 U. S., 556, at page 560.)

At page 16 of the brief on behalf of the appellant the case of *Goodman* v. *Niblack* (102 U. S., 556) is cited as authority for the proposition that the use of the words "transfer" or "assign" in a statute is broad enough to include an assignment by operation of law, as well as by the act of a party. Undoubtedly this is true if the intention of the law-making power can be so gathered from a construction of the whole act;

and it is none the less true, conversely, that language used in a statute, although apparently general and unlimited, may and must be limited in its operation and effect where it may be gathered from the object and purpose of the whole statute that the language used was designed to apply to certain persons or things or was to operate only under certain conditions or to be enforced only by certain officers. (*McKee* v. *United States*, 164 U. S., 287, 293; *Brewer* v. *Blougher*, 14 Peters, 198; *United States* v. *Sanders*, 22 Wall., 492; *Murray* v. *Gibson*, 15 How., 421.)

In *Brewer* v. *Blougher* (14 Peters, 178), this court, through Mr. Chief Justice Taney, declared that "it is the duty of the court, in construing a statute, to ascertain the meaning of the legislature from the words used in it, and from the subject matter to which it relates, and to restrain its meaning within narrower limits than its words import, if satisfied that the literal meaning of its language would extend to cases which the legislature never designed to embrace in it."

And in *McKee* v. *United States* (164 U. S., 287) this doctrine was reannounced and reaffirmed by the court through Mr. Justice Peckham. This, of course, is nothing more than the basic principle that the courts will endeavor to ascertain the intent of the legislature in passing a given act and to enforce the act in conformity with the intent thus ascertained. One of the most satisfactory, as well as the most legitimate ways of ascertaining this Congressional intent, is by having reference to the proceedings and debates on the bill in

the two Houses of Congress. (*Northern Pacific Railroad Co.* v. *McRae*, 6 Land Dec., 400–402, per Secretary, afterwards Mr. Justice, Lamar; *Blake* v. *National Bank*, 23 Wall., 307.)

Upon this principle it will be enlightening to glance for a moment at the legislative history of the act of June 16, 1880, in so far as it affects the second section of the act, and omitting those portions relating to the other sections of the act which have no relevancy here. This may be done very briefly. The bill (H. R. 3171) was introduced in the House by Mr. Page, of California, on January 7, 1880, and was referred to the Committee on Public Lands (Cong. Rec., vol. 10, part 1, p. 20) April 6, 1880, reported favorably with certain amendments, and referred to the Committee of the Whole (Cong. Rec., vol. 10, part 3, p. 2168) May 20, 1880. The bill and amendments were debated and considered as follows: (Cong. Rec., vol. 1, part 4, pp. 3594 to 3596, both inclusive.) After the bill had been read Mr. Berry said:

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> The Secretary of the Interior is authorized, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that from any cause the sale can not be confirmed, *to repay to the purchaser or his legal representatives or assignees* the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated.

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This bill aims to return those fees and commissions paid upon warrants found to be fraudulent, and which have been canceled. The object of the measure is, Mr. Chairman, that where the party who has honestly entered land upon those fraudulent warrants, and where they have lost the land, they ought not to be required to lose also the fees and commissions paid to the Government. If the bill is properly guarded it is manifestly just.

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The chairman of the committee then called for the report of the Committee on Public Lands, and those portions of it which refer to section 2 of the act are here inserted.

The Committee on Public Lands, to whom was referred bill H. R. 3171, have considered the same, and report as follows:

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Your committee think the bill properly guarded and its object manifestly just. The Government should certainly refund the money to the parties to whom it justly belongs, and has no right to retain money for which it gave nothing. Your committee therefore recommend the passage of this bill with the amendments proposed.

Mr. Page, chairman of the committee, said:

* * * The second section provides that in all cases where homestead or timber-culture or desert-land entries or other entries on public lands have been canceled for conflict, or where for any cause the entry has been erroneously

allowed, the fees paid into the Land Office, which have afterwards gone into the Treasury of the United States, *may be refunded to those parties.*

Of course, if the members of this committee will reflect for a moment, they will see it is unjust *to those parties* that the Government should retain their money when they have had no value for it in a single instance. The money was paid as fees and commissions to the registers and receivers of the Land Office. When they came here, it was found the entries had been erroneously allowed, and the Government could not comply with the conditions of the law, and therefore it is wrong that *these people* should lose the fees and commissions paid by them.

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Mr. PLUMB. The second section refers to a class of cases which frequently arise in the administration of the laws with regard to the public domain where errors occur. A person is erroneously permitted to enter a quarter section of land and pays for it. In a large number of these cases the Department holds under the law, as it now stands, that it can not refund the amount, notwithstanding the party who makes the entry does not get the land he pays the money for. It occurs frequently in town-site entries where the lands are discovered subsequently to have been withdrawn for railroad purposes. It occurs, too, that private parties have made preemption entries upon lands of a similar character. There is a great mass of cases where erroneous entries are made from misdescriptions of land, and so on.

Mr. PADDOCK. And where the local land officers themselves are responsible for the errors and not the parties making the entries.

Mr. PLUMB. Whether they are responsible solely or not, at all events they are responsible, because they permit entries to be made that it subsequently turns out should not have been made, and inasmuch as the settler or person seeking to make the entry depends on the local officer for his information in regard to the character of the land—that is to say, that it is land which he may properly enter—it is perhaps primarily the error of the land office. In all these cases *the Government gets from these innocent persons* fees, and in many cases the price of the land, which it religiously holds on to and does not pay back, as it ought to do. This second section is for the purpose of compelling repayment.

It will be seen, therefore, that the sole idea in the mind of Congress in passing this act was to protect the original entryman in having the purchase price, or the fees and commissions, as the case may be, returned to him in case his entry is subsequently canceled and the Government continues to hold his money without consideration. The word "heirs," of course, in this connection was inserted to protect his legal representatives in the case of his death, and the word assigns, of course, was inserted in order to enable him to dispose of the land, to find a purchaser for the land after the final receipt had been obtained and before the issuance of patent, so that his alienee, trans-

feree, or assignee would be subrogated to his rights in case the entry was subsequently canceled. The object, therefore, all through was to protect the entryman, but the construction which is sought to be placed upon this act by the appellant leads to the very opposite of this intent and instead of protecting the entryman, works upon him a great hardship by enabling some creditor to recover from the United States the money which he had paid for the land, and thus resulting in his loss of the land and in the loss of the purchase money. There are no safeguards to such a construction, and if once adopted the direst evil might result to the entryman. Suppose, for example, A purchased a quarter section of coal land, as was done in this case, paid therefor the sum of $3,200, and suppose that A owed some creditor the sum of $500 and the creditor should bring action against A, recover judgment, levy an execution upon said land, and sell it, and B should purchase the same for the $500 with accrued costs, and then suppose that the entry was canceled. According to the construction of the appellant, B, who purchased this land at the execution sale for the sum of $500, is now entitled to demand and receive from the Government the amount of A's original purchase price upon that land, thus to get the sum of $3,200 upon an outlay of $500. This only serves to show the possible hardships and absurdities which would result from a construction such as the claimant seeks to have placed upon this act. "While the consequences of a construc-

tion are not conclusive, yet sometimes they are worthy of notice"—per Mr. Justice Brewer in *United States* v. *Edmonston* (181 U. S., at p. 514). It was never the intent of the Congress that assignments by operation of law, if such an expression can be properly used in this connection, or, in other words, an enforced relinquishment of the land by the original entryman against his will and consent, should carry with it a right to the refund of this purchase money. The Government did not intend by the passage of this act to bring itself into a debt-collecting agency; its intention was to protect an innocent entryman who, by act of the Government, had lost his land, and the benefits were intended to be received by him, or by such person as he should voluntarily name.

It is submitted that the judgment of the court below is clearly correct and should be affirmed.

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